

# **Exhibit “14”**

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**  
3                                   **AT TACOMA**

4  
5 BRYCE MEYER, individually and as the  
6 representative of all persons similarly situated

7                                   Plaintiff,

8                                   vs.

9 AMERICAN FAMILY MUTUAL  
10 INSURANCE COMPANY and AMERICAN  
11 STANDARD INSURANCE COMPANY OF  
12 WISCONSIN, foreign insurers;

13                                   Defendants.

Case No.: 3:14-CV-05305-RBL

DECLARATION OF DARRELL M. HARBER.

14 I, Darrell M. Haber, state under penalty of perjury as follows:

15           1. I have been retained in this matter to provide opinions on the means, methods, and  
16 materials necessary to restore collision damaged vehicles to *as near as possible* to pre-loss  
17 condition and the impact that such repairs have on post repair vehicle values.

18           2. I am a professional automobile appraiser and former collision repair business  
19 owner. Under my ownership and direction, my shop, Stroud's Auto Rebuild, repaired tens of  
20 thousands of collision-damaged vehicles over the 25 years that I owned the business in  
21 Tacoma.. I have I-CAR collision repair specialty training. I am also licensed as a Public  
22 Adjuster in Washington and Oregon. I also hold a Washington State wholesale/retail automobile  
23 dealer license (WA 0677). I have also taken coursework in, and familiar with, the requirements  
24 of auto physical damage insurance claims handling. I have been a member of three major  
25 industry associations: the Automotive Service Association ( ASA), the Autobody Craftsman  
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1 Association (ACA), and the Society of Collision Repair Specialists (SCRS); I am a member of  
2 the Board of Directors of the Coalition of Collision Repair Equality (CCRE) and a charter  
3 sponsor of Insurance Consumer Action Network (ICAN); and I have been the Auto Body  
4 chairperson at Clover Park Technical College.

5 3. Over my career, I have conducted thousands of auto physical damage appraisals  
6 for the purpose of determining the fair cost of repair for repairable collision-damaged vehicles.  
7 I have also performed these services as the appointed appraiser under the "Appraisal" clause as  
8 provided in insurance policies to determine the amount of a disputed property damage loss.  
9 Further, I have conducted thousands of post-repair inspections to identify unrepaired damage to  
10 vehicles after their initial collision repair attempts and for the purposes of determining the  
11 vehicles' diminished resale value as a result of the collision. I maintain my automobile dealers'  
12 license and membership in the Washington State Independent Auto Dealers Association.  
13

14 4. Given my extensive experience in (a) repair techniques and procedures, (b)  
15 estimating, (c) identifying areas of repairs, (d) knowledge of the physical change in a vehicle in  
16 the repair process that make the areas of repair identifiable, (e) the presence of secondary  
17 damage on certain types of repairs repaired using industry standard "write what you see"  
18 estimating, and (f) the post repair sale of damaged and repaired vehicles, I have a through and  
19 global understanding of the means, methods, and materials necessary to restore collision  
20 damaged vehicles to *as near as possible* to pre-loss condition and the impact that such repairs  
21 have on post repair vehicle value.  
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23 5. My Curriculum Vitae is attached to this Declaration as Exhibit A.

24 6. On numerous prior occasions I have been asked to determine if there was  
25 *collision-related* diminished value (sometimes called "inherent diminished value") on a vehicle  
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1 given the repairs that have been done, or damages estimated for the repair, after a collision.

2 “Diminished value” or “loss in value” is the difference between the vehicle’s fair market value  
3 before the wreck and vehicle’s fair market value, after repair conducted to industry standards.<sup>1</sup>

4 This loss flows from the fact that when certain vehicles (those that are newer and have less  
5 mileage) have certain types of damage (frame/structure and paint/body) those damages can be  
6 seen and identified even after repair. As such a repair shop can’t fully restore these type of  
7 vehicles to their pre-loss condition. Instead, market demand and market value goes down for  
8 that vehicle *even if a repair shop does the best possible job fixing it.*  
9

10 7. “Diminished value” should be distinguished from what has been called by some  
11 “stigma damage.” The term “stigma damage” is used by some to refer to a vehicle losing  
12 market value even though the body shop did or could restore it fully to pre-loss condition; i.e.  
13 where there was no tangible, and therefore identifiable, differences in the vehicle after repair.  
14 For example, a vehicle which did not have major damage and only requires the repair or  
15 replacement of bolt-on bolt-off parts, can be repaired to its pre-loss condition. Examples of  
16 such repairs would be repairs of glass or chrome bumpers (when OEM replacement parts are  
17 used on the repair) or things like the replacement of a convertible top or tires or wheels. With  
18 these types of repairs a vehicle inspection (such as that done when vehicles are bought and sold)  
19 would not reveal the fact of an accident, and any alleged loss would not flow from any actual  
20 identifiable differences in the vehicle.  
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24 <sup>1</sup> There is a second type of loss which flows from the additional presence of either improper repair or areas of  
25 unrepaired damage. If this type of damage is present it increases the amount of loss beyond what would exist on a  
26 vehicle if it had proper repair, and therefore only collision-related diminished value. Unlike collision related  
27 diminished value, which is a market loss, the process of valuing this type of additional loss is different, and requires  
standards can be determined, or it can be determined that the vehicle is (or should be) a total loss.

1           8. In my years of working in Washington State with the public as a repair facility  
2 owner and operator and as a used car dealer and appraiser I have seen first-hand the results of  
3 the aftermarket repair and refinish process. The repair facility I owned and operated for 25 years  
4 utilized the most advanced, state of the art refinish equipment and materials available. Yet,  
5 despite all best efforts being employed the final finish that can be produced in a body shop is  
6 not the same quality as what the factory is able to deliver.

7  
8           9. In my professional work, I find issues such as pitch angle, a term used to describe  
9 a type of color difference in some metallic colors which do not exactly match the factory finish  
10 at certain angles. Representatives from the paint manufactures routinely explain that differences  
11 in temperature, humidity, atmospheric pressure, and even the technique of the refinish  
12 technician can and do make noticeable differences in the final outcome of the painted panels  
13 from that produced in the original OEM finish. As a result the paint manufactures instruct the  
14 refinish technician to blend the adjacent panel in order to get as close as possible the correct  
15 color match. The purpose of the "blend panel" is to trick the human eye so the differences in  
16 paint color and finish are not as readily apparent to the average consumer. While blending is a  
17 perfectly appropriate and necessary repair technique, is paid for by insurance companies on  
18 nearly every estimate requiring painting, and is an industry standard technique, it is readily  
19 apparent in a subsequent inspection and serves to identify the extensiveness of repair to a  
20 vehicle and the presence of prior collision damage. Mr. Meyer's vehicle is perfect example of  
21 these issues, with the use of blending to try to make a repaired color which is different in shade  
22 from the original tri-coat yellow appear similar to the eye on a quick inspection.

23  
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25           10. Another major difference in the aftermarket refinish is the hardness. Refinished  
26 panels will almost always be more susceptible to chipping than the original factory finish. Both  
27



1 in my professional work, and in cases involving diminished value, on numerous occasions I  
2 have inspected vehicles with collision repair after the passage of time. It is always notable and  
3 identifiable those areas which were repaired and repainted as the original factory painted  
4 (undamaged) areas will have less chipping and wear as compared to the matching refinished  
5 parts (e.g. comparing repaired left fender to original right fender) despite usually being on the  
6 vehicle far longer. Simply put, no after-market collision paint repair, due to the inability to  
7 bake on the finish as done in the OEM painting process, will be as durable as the original OEM  
8 paint. AmFam's own witnesses appear to agree with me on the differences in body shop repair;  
9 to quote AmFam's Certified Repair Program Senior Specialist Matt Fuqua "there's only so  
10 much you can do" with aftermarket paint. 11/4/14 Deposition of Mathew L. Fuqua at 27:12 to  
11 27:17.

12  
13 11. In this case, and in prior Diminished Value cases such as *Moeller v. Farmers*, I  
14 have been asked to inspect either the Plaintiff's vehicle or vehicles selected by the insurance  
15 company for inspection. On these and other inspections, the extensiveness, and presence of  
16 collision body and paint repair is easily detectable by a visual inspection, and is also revealed by  
17 the use of a paint thickness gauge. These techniques are used by auto dealers to identify those  
18 vehicles with auto body collision repair. As AmFam's own witnesses have admitted, dealers  
19 inspect vehicles for prior accidents before buying or selling them. See 11/6/14 Deposition of  
20 Wade A. Nielson at 34:19 to 34:22.

21  
22 12. The differences though, as admitted by numerous knowledgeable employees of  
23 insurers, do not end with the vehicle's paint and body work. Vehicles in accidents sufficient to  
24 require repair of structural parts of the vehicle or their supports creates "secondary damage" in a  
25 vehicle that is not, and can not be economically be, repaired in Collision repair. This damage  
26  
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1 will be located away from the point of impact, and can only be found with a complete tear down  
2 of the vehicle (such as I participated in with a Toyota 4-runner) after which the vehicle is  
3 commercially unrepairable. Yet this damage leads to changes in the vehicle's feel and sound,  
4 and can lead to premature failure of parts and reduced reliability.

5 13. A visual inspection of the vehicle owned by Mr. Meyers in this case shows the  
6 areas of repair, and moreover shows that the vehicle has suffered frame damage. The signs of  
7 repair and extensiveness of repair on Mr. Meyers's vehicle, like those of other vehicles in the  
8 Class, would be readily and visually apparent to a knowledgeable buyer. My inspection also  
9 revealed damage on Mr. Meyer's vehicle that can't economically be fully repairable to pre-loss  
10 condition in commercial collision body repair, and his vehicle will always be different in  
11 material ways that it was pre-loss.  
12

13 14. I have reviewed the Class Definition in this matter, which is the same definition  
14 used in prior cases such as Moeller v. Farmers where I was retained:  
15

16 All American Family insureds with Washington policies issued in Washington  
17 State, where the insured's vehicle damages were covered under the UIM PD  
18 coverage, and

19 1. the repair estimates on the vehicle (including any supplements) totaled at least  
20 \$1,000;

21 2. the vehicle was no more than six years old (model year plus five years) and had  
22 less than 90,000 miles on it at the time of the accident; and

23 3. the vehicle suffered structural (frame) damage and/or deformed sheet metal  
24 and/or required body or paint work.

25 Excluded from the Class are a) claims involving leased vehicles or total losses, b)  
26 the assigned judge, the judge's staff and family, and c) accidents occurring before  
27 March 6, 2008.

28 15. It is my professional opinion, based upon my extensive experience, that vehicles  
29 that fall with-in the proposed Class are tangibly and identifiably different than they were in their  
30 pre-accident condition. Moreover, vehicles that fall within the Class will all have damage repair

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1 which can be, and is, identified by knowledgeable buyers and sellers, and as such will have  
2 diminished value. Finally, vehicles which fall within the proposed Class will all have a  
3 reduced market value as a result of the identifiable and tangible differences from similar  
4 undamaged vehicles.

5 The forgoing is true and correct to the best of my knowledge, and if called for, I would so  
6 testify.

7  
8 DATED this 15<sup>th</sup> day of December 2014, at Tacoma Washington.

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11 Darrell M. Harber

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DECLARATION OF DARRELL M. HARBER

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**Exhibit “A”**

## **DARRELL M. HARBER**

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**Updated November 2013**

### **Education**

- Southeast Missouri State College, one year
- U.S. Army Vet Services—Food inspections specialist; promoted to position with the responsibility to start, manage and co-ordinate the Defense Department's first Quality Audit program for veterinary services
- Washington State Real Estate Broker—Appraisal, Commercial, Residential, Land
- Automotive Management Institute (affiliated with Automotive Service 0
- I-CAR (Inter-Industry Conference On Auto Collision Repair)—10 units
- Wreck Check mentoring with James Lynas
- The Institutes - AIC 30 Claim Handling Principles and Practices
- The Institutes - AINS 21 Property and Liability Insurance Principles
- The Institutes - Ethical Guidelines for Insurance Professionals
- The Institutes - AIC 039 Auto Claims Practices
- The Institutes – AIC 038 Personal Auto Insurance and Management of Bodily Injury Claims

### **Professional Affiliations**

- Past member - I-CAR (Inter-Industry Conference On Auto Collision Repair)
- Past member - ASA (Automotive Service Association)
- Past member - ACA (Autobody Craftsman Association)
- Past member - SCRS (Society of Collision Repair Specialists)
- CCRE (Coalition for Collision Repair Equality) member of the board of directors
- ICAN (Insurance Consumer Advocate Network) “charter sponsor”
- Past Autobody Chairperson, Clover Park Vocational College
- Past Consultant to Universal Underwriters Insurance Group—Consumer Advisory Committee (affiliate of Zurich)
- Washington State Independent Auto Dealers Association
- Wreck Check repair/post repair facility (past member)
- Better Business Bureau in Alaska, Oregon, and Western Washington
- Tacoma Pierce County Chamber of Commerce (past member)

- NIADA (National Automobile Dealers Association)
- Washington State Real Estate Broker license #6537
- Washington State Public Adjuster, AIC (WAOIC license#844070)
- Oregon Appraiser Certificate #V60-013
- Oregon Public Adjuster license #17082587
- Washington State Motor Vehicle Dealer license #0677

### **Experience**

- Owner of Harber Appraisal
- President of Stroud's Auto Rebuild, Inc.—owned and managed autobody collision facility 1987-2012. Responsible for over 50,000 collision repairs.
- President of Harber Motors, Inc.—auto dealer in Washington State
- Vehicle repair evaluations and diminished value assessments since 1997. Responsible for the inspection and assessment of hundreds of vehicles for diminished value.
- Assisted numerous consumers as their appointed appraiser in the appraisal process under that clause of their insurance policy.
- Consulted with numerous local and national legal firms. References available upon request.
- Hosted CrashTalk for nine years. CrashTalk was a live call-in radio show in Seattle, WA; Amarillo, Texas; and streaming online that discussed accident and repair issues, car safety, and insurance claims.
- Partner in National Health Finance of Washington and Oregon
- Auto Body Shop Inspector for Assured Performance Network